29

19 47.-48 **File No.** 3441/36

B CLASS Public Works **DEPARTMENT**

El. **BRANCH**

Subject:— Electric license

Borsad

Application for - by

Mr. B.D. Desai

File No. 3441/36 . El.

Std. Sectt. Slip 24-A

G. R., G. D., No 2408, dated 22-6-22.]

Correspondence

DOCKET SHEET (B)

Subject :—

File No. 3441/36

P. W. DEPT.

E/. BRANCH.

References :—

Date.	To whom sent.	Notes and instructions.

El.Br.

Resubmitted with reference to the D.S.(I.& R)'s note on p227 ante.

2. The question of referring these papers u.o. the Comm. N.D. may be considered after obtaining the remarks of the El. Engr. and the R.L.A. as proposed in the following paras. which are put up in modification of the proposals in the O.N.d. the 24-6-47.

3. Please see the O.N. on pp. 136-137 (which describes the facts of this case) and the R.L.A' opinion theron. It will be seen therefrom that the specific points then brought to the notice of the R.L.A. were as follows:-

(a) In view of thedifficultes of securing electrical equipment from overseas during the war, the Govt. of India have intimated that licenses for fresh supply on extension of existing supply should wherever possible be refused .

(b) All formalities re:the grant of an electric license for Borsad by this Govt. to one Mr. D.D.Desai have been gone throught and Govt. has promised Mr. Desai to grant the necy. license on his showing to the satisfaction of the El.Engr. to Govt. that he has purchased all the plant and machinery reqd. for the scheme. (This promise by Govt. was given to Mr. Desai before the G. of I orders refd. to in (a) above, were recd.)

(c) It is found from the report of the El. Engr. that Mr. Desai has purchased certain machinery but has not been able to purchase all the machinery reqd. for the scheme.

and.....

and the R.L.A's advice was sought whether there would be any under legal liability on this Govt. in view of the Commitment as at (b) above if the license for Borsad is refused to Mr. Desai in the circumstances stated at MxxxD (a)and (c) above. The RLA. evidently advised that Mr. Desai might contend in the court that he was not given sufficient time in the abnormal conditions of the war to obtain all the necy. machinery and further stated that since Govt's promise had involved Mr. Desai in the purchase of some machinery, it was doubtful whether the result of the litigation would be in Govt.s favour . Consequently, it was decided with the consent of the Govt. of India that the suspended license for Borsad should be granted to Mr. Desai subject to the following specific conditions:-

1. that he does not purchase additional machinery until after the war.

2. that the suspended license will not come into operation until three years after the termination of war.

4. Mr. Desai has now requested Govt. to grant him the necy license for Borsad. The circumstances have however since changed. The position now is quite. diffdent. The Borsad Muny. has applied for the grant of the above license. It seems from the remarks of the D.M.Kaira. that Mr. Desai if not in a position to fulfil his obligations under under the I.E. Act. The Commr. N.D.endorses the views of the D.M. the question , there-fore, for consideration is whether, in view of all this, Govt. can now refuse the grant of the Borsad license to Mr. Desai without entailing undue legal liability. The R.L.A's advice may be sought on this point in view of the changed circumstances mentioned above. $

5. Before the R.L.A. is consulted, the El. Engr. to Govt. may see the papers u.o. for remarks in the matter That officer may further be requested to verify the fact and give his definite opinion whether Mr. Desai is..

is or is not in a position to discharge fully and efficiently, his duties and obligation under the I.E.Act. if a license for Borsad i granted to him.

Id/-
4/7/47

Id/-
7/7/47.

u.o. to El. Engr. dated 8-7-47.
with file no. 6565/36

MCD.

Below U.O.R.No.3441/36 dated the 8th July 1947. from Government in the Public Works Department.

No. L85/1505 of 1947.
Bombay 26th July 1947.

Returned, with compliments.

2. I agree with the District Magistrate, Kaira, and would state that Mr. Desai's management of the Dakor-Umreth Electric License has been far from satisfactory. Mr. Desai appears to have a quarrelsome nature and is in the habit of taking law into his own hands. He has shown utter disregard of rules and deliberately committed a breach of the rules for which he was recently convicted and fined Rs. 250/-- Such a person is not in my opinion, likely to observe the obligations placed on him by the Indian Electricity Act, and is not likely to make use of the license in the best interest of the public .

Sd/-
Electrical Engineer to Govt.

3441/36/ 32257.

El. Br. P .W. D

Submitted with refec. to the O.N. on pp.229-231 ante.

2. It is clear from the El. Engrs remarks overleaf that Mr. Demi is not likely to observe the obligations placed on him by the I.E. Act. These papers may now be refd. u.o. to the R.L.A. as already proposed at "A" on p.230 ante.

Id/-
29-7-47.

Id/-
30/7

U.O. to the R & A dated 31/7/47.
with file No. 8565/36.

Indian Electricity Act, 1910. Grant of licence to Mr. Desai of Borsad.

It is true that by letter dated the 27th August 1941, Mr. Balwantbhai Dadubhai was informed that Government would accept a reduced amount of Rs.5,000/- as deposit and grant the licence to him on his showing to the satisfaction of the Electrical Engineer to Government that he has purchased all the plant and machinery required for the scheme. But this communication would not amount to any binding and enforceable agreement requiring Government to issue licence to Mr. Desai even on his showing satisfactorily that he has purchased all the plant and machinery required for the scheme. Under section 3 Sub-section (1) of the Indian Electricity Act, 1910, absolute discretion vests in the Government to grant or refuse a licence to the applicant. In exercising this discretion Government will have to consider whether the applicant is suitable and has enough resources to carry on the the undertaking. Before the aforesaid communication was issued in 1941, Government had no definite information about the unsuitability of Mr. Desai for holding a licence. It has now transpired that his management of another electric concern has been far from satisfactory and that he is a man of quarrelsome nature and is in the habit of taking law into his own hands. Further, he has been convicted and sentenced to fine for the breach of Electricity Rules. Apparently such a man cannot be considered suitable for the grant of a licence under the Indian Electricity Act, for the interests of the public which the Act contemplates to safeguard, would be jeopardized. As stated above it is entirely within the discretion of Government. to grant or refuse a licence. In the circumstances, there appears no objection to refusing the application of Mr. Desai for the licence, and Government would not be liable for damages for such refusal. However, Government

may fortify themselves with the opinion of the advocate General as the party being quarrelsome is likely to take the matter to court.

Sd/-
29-4-47.

Remembrancer of Legal Affairs.

U.B.to P.W.D. No. 11451 dated the 1st Dec. 1947.

3441/36/51148.

El. Br. P.W.D.

Submitted with refce. to the C .S.S. dated the 4-7-47- & the 29-7-47.

2. With reference to "A" on p 230 ante. the R.L.A. opines that there seems no objection to refusing the application of Mr. Dosai for the Borsad license and Govt. would not be liable for damages for such refusal . He however, advises Govt. to fortify itself with the opinion of the Advocate General. These papers may, therefore, be refd. u.o. to the Advocate General (for advice on the point raised at "A" on p.230 ante.) Through the R.L.A. as required under rule 15(2) of "Law officers Rules & Rules for the conduct of the Legal Affairs of Govt. "

Id/-
16/12/47

Id/-
16/12/47.

u.o. to the Advocate General
Through the R.L.A.

Id/-
18/12/47.

u. o. to the R.L.A. & advocate General dated 19-12-47.
+ with file No. 8555/36

No. 12 of 1948.

Advocate General's Chambers.
High Court,
Bombay, 9th February 1948.

U.O.R. to the Advocate General of Bombay,
No. 13377 dated the 24th of December 1947.

O P I N I O N.

Government promised to grant a license to Mr. B.D. Desai involving him in the purchase of plant and machinery. He also made the required deposit, All the formalities have apparently been gone through. (see page 229 of the file.) as Mr. Desai has now requested the grant of the license, I presume that he has acquired all the machinery, and he is in a position to work the licence. Government has exercised its discretion, and it seems to me that there is a valid contract now for the grant of the license for consideration i.e. purchase by Mr. Desai of the machinery and the payment of the deposit.

The subsequent discovery of Mr. Desai's unsuitability is , in my poinion, not material. There has been no breach of any condition of this particular license, and the fact that Mr. Desai may have failed to carry out some condition of another license leads to no conclusion that he will not carry out the terms of this license. if Government now refuses, in my opinion , they will lay themselves open to a suit for damages. The discretion has been exercised and Mr. Desai has been made to Act to his detriment on Government's promise. to the extent that he has spent money, probably a considerable sum, this being led to do so by Government, gives him in my opinion a good cause for damages.

B

C.K.Daphtary,
Advocate General.

MBD

Office of the R.L.A.

A copy of the Advocate General's opinion is forwarded here-with

Sd/-
11-2-48

Remembrancer of Legal Affairs.

U.R. to P.W.D., No.1534, dated the 13th February 1948 with P.W.D. file No. 8565/I

3441/36/7459.

E.L.Br. P.W.D.

Submitted with refce. to the O.M. dated the 16th Dec. 1947.

2. Before taking further action, the El. Engr. may see the papers u.c. and please state whether the papers presumptions made (at A & B on p 239 ante) by the Advocate General are correct.

Yes.

Id/- 19/2/48 Secy (I) may please see the Advocate General's opinion.

Id/- 18/2/48

Id/- 18/2/48

u.c. Elec. Engineer to Govt. dated 20/2/48.

Copy of letter No. LRM.31/3975 dated 21st February 1948 from the Electrical Engineer to Govt. P W.D., Bombay. to B.D. Desai Esq. BSC.LLB. Dakore.
Re. Borsad Electric License.

I have the honour to request you to please furnish this office with a statement showing details of expenditure incurred by you in connection with your application for the above. The details of all the plant and machinery purchased by you for the undertaking together with the cost thereof should also be furnished. This should be treated as most ungent.

Copy of letter No. L. 85/4578 dated 29th March 1948. from the Electrical Engineer to Govt. P.W.D. Bombay, to B.D.Desai. Esq. BSc. LLB., Dakore.
Re:- Borsad Electric License.

I have the honour to invite a reference to this office No. LRM 31/3975 dated the 21st February 1948(Copy enclosed) and to request you to furnish the necessary information called for therein within a week from the receipt of this letter failing which Government will be advised to recordmd your application for the grant of the license.

Copy of letter dated 31st March 1948 from B.D.Desai & Co. Daker to the Electrisal Engineer to the Government of Bombay, Public Works Department, Fort. Bombay, not signed.
Re. Borsad Electric License.

Your Ref. No. L. 85 /4578 of 1948.

I beg to acknowlegge your letter dated 29th March 1948. and also a previous letter on the same subject. If the delay caused in my replying the same has inconvenienced the Government the same may kindly be excused. As you are aware this matter

has.....

has long been pending before the Government and practically nothing of importance has been heard by me since long, and so most of the relative record is lying at various places and to some extent missing alas. Moreover I was preoccupied with other matters and hence the delay in replying.

As regards details of expenditure incurred by me in connection with the above License I have to inform you that the nature of the expenses are so varried and different that it would be rather difficult to decide as to whether certain expenses can be included in the list called forth by the Government. E.g. a representative of ours had been sent to Africa for purposes of share subscription, and a considerable amount was collected but the same had to be treated returned. Most of the equipment was either secured or promised.Everything in connection with the formation of the Joint Stock Company was ready. Negotiations for the purchase of land at Bersad were started and the site fixed. Considerable amount of travelling expenses were incurred, large sums of money were blocked up From all this you will please realise that it is but rather difficult to make up a statement of expenses and that too after a period of eight or ten years of frustration and last hope.

I would be much obliged if you will kindly inform me the lines on which the statement be made, although I am doing my best to furnish the statement as desired by you in time. Wishing to be excused for the trouble . Thanking you.

"True Copy "

Sd/-
Head Clerk of Elec.
Engr. to Government.

Below U.O.R.No. 3441/36/7459 dated the 20th February 1948 from Government in the Public Works Department.

No. L85/3 of 1948.49

Bombay 2nd April 1948.

Returned with compliments.

2. Copies of correspondence between this office and Mr. Desai are enclosed for information of Government. Unless Mr. Desai gives a complete list of Machinery purchased by him and also the statement of expenses incurred by him in connection with his application for the license, it is not possible to decide whether the request of Mr. Desai for the grant of license be granted or refused. Mr. Desai is being requested to furnish the details and as soon as the same are received, a further report will be submitted to Government.

Sd/-
Electrical Engineer to Govt.

3441/36/16998.

El. Br. P.W.D.

Submitted with reference to the O.N. dated the 17th February 1948.

2. "A" overleaf may be awaited. Attention is casually invited to to-day's O.N. in the linked case No.I (file 8565/36/16838). which describes the facts of this case in brief.

Id/-
6/4/48

Id/-
6/4/48

Id/-
/4/48.

Originals in file 8565/36

Copy of letter No. Nil dated the 25th April 1948, from Balvantbhai Dadubhai Desai, Esqr., C/O The Dakor-Umreth Electricity Co.Ltd. Dakor, to the Electrical Engineer to the Government of Bombay, P.W.D. Bombay, Re:- Borsad Electric Licenses.

With reference to your kecent correspondence on the above subject. I have the honour to state that accurate details are not possible for all the various items of expenditure not it is possible to attribute so many incidental expenses incurred by me for this purpose to the account of this License. Still however I beg to lay the following for your guidance, for the accuracy of which I cannot vouchsafe, after such a length of time, so the Government may kindly judge for themselves.

1. Application for License.

License Fee	...	Rs.500-0-0
Sundry expenses Such as .. maps .printing, advertisement etc.	... ...	Rs. 500-0-0

2. Purchase of equipment etc.

Part of the Machinery was transferred to the Dakor-Umreth Electricity Co. some was sold out some items which were contracted for by depositing part of price were not taken delivery of owing to sudden breakdown of our plans. We have at present one generater left and the same can be seen at Dakor . How to assess the cost of this effort and waste of time and locking up of finance is left to the Government.

3. Deposit With the Government.

A sum of Rs. 5,000/- was placed with the Government which was subsequently returned.

4.Formation of Company, preliminary and other expences.

Travelling, printing and other incidental expenses- Rs.1,000/-

Special journey to South Africa for purposes of subscription of Capital. ... Rs.4,000/-

5. Loss of interest.

Government can Judge for themselves.

I have tried to give above the figures as best as are possible, however, if the Government wants any further clarification the same will be furnished.

"True Copy"

Sd/-
Head Clerk to the
Electrical Engineer to Government.

344/36.

origigale in
file No.8565/36

No. L.63/460 of 1948.
P.W.D.Offices, Churchgate Street.
Fort.Bombay, 23th April 1948.

To

The Secretary to Government,
Public Works Department,
Rd:- Borsad Electric License.

Reference:-Government, Public Works Department, letter No. 8565/36-El.dated the 10th April 1948.

2. Mr. Desai was asked to furnish a statement of expenses incurred by him in connection with the above license and a copy of his reply since received is enclosed for information of Government. The information furnished by Mr. Desai is so vague that it is not possible to form any opinion about the actual expenses incurred by him. I am however, of opinion that Mr. Desai must not have spend more than Rs.2,000/- including the license fee. The generator which Mr.Desai has at Dak-or can be utilised for his undertaking the o, where it is urgently required.

3. As regards the expenses incurred for formation of a Company to take over the license, I am of opinion that there was no neccesity to form a company till a license was actually granted, and as such these expenses should not be taken into consideration.

4. As Mr. Desai has proved himself to be incompentent to fulfil the obligations imposed upon him by the Indian Electricity Act, I am of opinion that it is neither desirable nor will it be in the interest of the public at Borsad to grant the license for Borsad to him.

Sd/-
Electrical Engineer to Govt.

.S&Of to Ct.

16998
3441/36/~~33469~~.

P. W. Deptt.

El. B.

The question at issue is whether the application for Borsad El. License received in 1939 from Mr. B.D.Desai to whom the license could not be granted due to the war conditions, can now be rejected without incurring any legal liability in view of the new reported unsuitability of Mr. Desai to hold the license.

2. Paras.2 and 3 of the offices note dated the 6-4-48 in file No. 8565/36 give the history of the whole case. The R.L.A. has opined that there appears no objection to refusing Mr.Desai's application for Borsad license. The Advocate General is however of the opinion that Govt.refusal would give Mr.Desai a good cause for damages on the grounds -

(a) That Mr. Desai has acquired all the machinery;

(b) that he is in a position to work the license;

(c) that he has spent a considerable sum relying on the Govt. promise to grant him the Licence.

3. The El.Engr.was asked to collect necy.information with reference to (a),(b) and (c) in para. 2 above. He has now furnished copies of the corres. between him and Mr.Desai from which it seems Mr. Desai has not acquired all the machinery required for the purpose .The El.Engr. states that the information supplied by Mr. Desai is vague and in his opinion Mr. Desai must not have spent more than Rs.2,000 including the licensee fee in connection with his application for Borsad License. The El. Engr. further opines that it is neither desirable nor will it be in the interest of the public at Borsad to grant an electric license for Borsad to Mr.Desai who has proved himself to be incompentent to fulfil

the.....

the obligations imposed upon him by the I.E.Act,1910.

4. In the circumstances stated above, the papers may again be referred u.o.to the Advocate General. (through the H.L.A.) who may be requested to give his revised opinion on the question mentioned in para 1. above, in the light of the latest report of the El. Engr. in the matter.

Id/-
8-5-48

Id/-
10/5/48.

u.o. to the H.L.A. & Advocate General
+ with file No.6583/36/16839.

Office of the R.E.A.

Indian Electricity Act.1910.

Grant of License.

As desired by the Public Works Department the Advocate General was consulted again A copy of his opinion No.24, dated the 2-6-1948 is appended.

Sd/-
8/6/48.

Remembrancer of Legal Affairs.

+ With file No.8565/36/16838 of 48

* u.r.to P.W.D., No.5427, dated the 9th June 1948

MBD.

No.24 of 1948.

Advocate General's Chambers,

High Court,

Bombay, 2nd June 1948.

xU.O.R. to the Advocate General of Bombay, No.5021, dated the 27th of May 1948.

Opinion.

I have seen the further information acquried after I gave my first opinion of the 9th of February 1948. From the letter of Mr. Desai at page 245 of the file, a and from the letter at page 249 of the File, it appears that no machinery or hardly any machinery has been acquired (see item2 at page 249), and Mr. Desai therefore my is not in a position to work the License. I had in my earlier opinion presumed, as he had applied for the License, he had acquired all the machinery. Having regard to the further facts elicited, I think, Government would be justified in refusing to grant the License.

In any event, it appears reasonably clear that the damage, if any , sustained is comparatively small and Government can take the risk of refusing to grant the License.

Sd-C.K.Daphtary,

Advocate General.

El. Br.

Submitted .

2. In a nut shell the question under consideration in these pps. is whether the application for Borsad Elec. Lincense received in 1939 from Mr. B.D.Desai, whom Govt. promised to grant the lincese but could not grant it due to war conditions, can now be rejected without incurring any legal liability as it is since reported that Mr. Desai is not in a position the discharge fully and efficiently his duties and obligations under the I.E.Act if a license is granted to him.

3. For details of the history of this case please see paras. 2 and 3 of the O.N. dated the 6-4-48 in file No. 8565/36 put up herewith as linked case.

4. The R.L.A. advised in this matter that there was no objection to refusing the appln. of Mr. Desai for the grant of Borsad lincense, but the Advocate General opined. earlier, that refusal to grant the license now would give Mr. Desai a good cause for damages. on the following grounds.

(a) That Mr. Desai has acquired all the Machinery and is in a position to work the license.

(b) that he has spent considerable sum relying on Govt. promise to grat him the license.

In his opinion subsequent discovery of Mr. Desai's unsuitability was inmaterial.

5. The El. Engr.was therefore requested to collect and furnish necy. information with refce. to the above two points. The information supplied by the El. Engr. revealed that Mr. Desai had not acquired all the machinery required for the purpose. El. Engr. also stated that in his opinion Mr. Desai must not have spent more than Rs. 2000 including the license fee in connection with his application for the grant of license and further advised that in the interest of the Public at Borsad the license may not be granted to Mr. Desai who has proved himself to be incompetent

To-------

to fulfil the obligations imposed upon him by the I.E.Act. 1910 The Advocate General was therefore again requested to review his opinion on the question in the light of the information now furnished by the El. Engr.

5. The Advocate General now opines that having regard to the further facts elicited Govt . would be justified in refusing to grant the license, and that the damage if any, sustained is comparatively small.

6. In the circumstances the grant of a license to Mr. Desai may be refused and he may be informed as per draft put up for approval. The El. Engr. may, however see it u.o. before submission.

Id/-
30/6/48

Id/-
30/6/48

V.Urgent

U.O. to Elect. Engineer dated 1-7-48

No.3441/36/M El. P.W.Deptt.

B.C. 15th July 1048

To

Messrs. B.D.Desai and Co.

Medows House Medows Street,

Fort. Bombay.

Subject:- Borsad Elec. License.

Dear Sirs,

With refce. to the correspondence ending with C.L. No. 3441/36-El(I), dated the 12-4-46 I am directed to state that your appln. for a license to supply electrical energy to the town of Borsad. cannot it is regretted, be granted.

Yours Faithfully.

Copy forwarded to

the Commr.,N.D.(With ref. to Govt. cndt. No. 8563/36-El., dated 10-4-48.

the D.M.Kaira (with refce. to his letter No. P.O.L.875, dated the 20-5-47 addressed to the Commr. N.D.

the El.Engr. to Govt. (with refce, to his No. L.83/460, dated the 28-4-48)

the President, Borsad Muny. (with refee to his letter No. 66 dated the 4th /10th May 1948).

2. The President is informed that the question whether a license for the distribution of electrical energy to the town of Borsad should be granted to Borsad Muny. is now under consideration of Government.

Id/-
30/6/48.

Id/-
30/6